

The Retailers' Occupation Tax does not apply to farm machinery and equipment that is used or leased for use primarily (over 50% of the time) in production agriculture or for use in State or federal agricultural programs. See 86 Ill. Adm. Code 130.305. (This is a GIL).

October 22, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 10, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY has swine production facilities in a number of states and also assists members of our cooperative network with their swine production facilities. We are accumulating data on the proper tax treatment regarding the taxability of vaccines, medications, medical supplies and general supplies used in swine production. Please review the following list and provide your response as to the taxability of the product purchased.

It is our understanding that the Illinois Retailer's Occupational Tax (sales tax) and use tax is imposed on the retail sale and/or use of tangible personal property in the state. However, Illinois statutes specifically exempt the sale and use of chemicals used in agriculture production. In addition, Illinois exempts hand tools used primarily for agricultural production.

Please give us your opinion as to the taxable status of the following products used in our swine facilities:

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Your assistance is appreciated. If you have any questions, please contact me at Xxxxx. We look forward to your response.

The Department is unable to determine the taxable status of the items in your letter due to the lack of information explaining what the items are and how the items are used. The following information generally discusses the topics raised in your letter.

The Retailers' Occupation Tax does not apply to farm machinery and equipment that is used or leased for use primarily (over 50% of the time) in production agriculture or for use in State or federal agricultural programs. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.305 which are the Department's regulations for "Farm Machinery and Equipment." The definition of "production agriculture" is set forth under subsection (b) of the regulation and states as follows:

"Production agriculture is the raising of or the propagation of: Livestock, crops for sale for human consumption; crops for livestock consumption; and production seed stock grown for the propagation of feed grains and the husbandry of animals or, for the purpose of providing a food product, including the husbandry of blood stock as a main source of providing a food product. Production Agriculture also includes animal husbandry, floriculture, aquaculture, horticulture, and viticulture. (Section 2-35 of the Act)"

Please also note that the type of item is not the only consideration in determining whether or not it will qualify for the exemption. Whether a specific item qualifies for the exemption depends also on how the item will be used by the purchaser. Consumable supplies generally do not qualify for the exemption. See subsection (k) of the enclosed copy of 86 Ill. Adm. Code 130.305.

Gross receipts from proceeds from the sale of semen used for artificial insemination of livestock for direct agricultural production are exempt from taxation. 35 ILCS 120/2-5(26) (1996 State Bar Edition). Generally ear tags used primarily on animals that will subsequently be sold, or whose products will be sold, qualify for the farm machinery and equipment exemption.

Please note that purchasers that claim the farm machinery and equipment exemption are required to provide the certification or blanket certification described in subsection (m) of Section 130.305.

A veterinarian is engaged in a service occupation subject to the Service Occupation Tax. The Service Occupation Tax is a tax imposed upon tangible personal property transferred as an incident of the sale of service. See 86 Ill. Adm. Code 140.101, enclosed. If a veterinarian transfers tangible personal property to a patient as a result of the practice of veterinary medicine, the veterinarian will be subject to Service Occupation Tax for that type of transfer, rather than Retailers' Occupation Tax.

However, if a veterinarian sells tangible personal property that is available through pet stores or other retail stores, those sales will be subject to Retailers' Occupation Tax liability even though the veterinarian may prescribe the product. For example, certain types of pet foods and flea powders sold by veterinarians with a prescription are available through pet stores without a prescription. The sale of such products to a customer will result in Retailers' Occupation Tax liability for the veterinarian. Tax should be charged on the gross receipts from the sale.

Further, please note that veterinarians owe Use Tax when they purchase items, such as instruments, syringes and needles, and other equipment, that are not transferred subject to their sale of service and that they use when performing their service.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect "tax" from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.